HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Writ Petition No.22309 of 1999

Between:

Syed Anwar Saleem … Petitioner

And

The Registrar (Vigilance Cell)

High Court of A.P., Hyderabad

and another … Respondents

:: ORDER ::

Counsel for the Petitioner: Sri V. Venkata Ramana

Counsel for Respondent No.1 : Sri C.V. Nagarjuna Reddy

Counsel for Respondent No.2 : G.P. for Home

December 30, 2005

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Per G.S. Singhvi, CJ

In this petition, the petitioner has prayed for quashing G.O.Ms.No.48, Law (L.A. & J—Cts.C) Department dated
25-4-1996 vide which he was dismissed from service. He has further prayed for quashing communication No. RoC. 40/ 94/Vigilence Cell dated 21-1-1998 vide which he was informed about rejection of the appeal filed by him against the order of dismissal.

The petitioner joined service of the High Court of Andhra Pradesh (hereinafter referred to as 'the High Court') as Lower Division Clerk on 15-8-1970. In the course of service he was promoted on various posts in the clerical cadre. In 1986, he was temporarily promoted as Munsif Magistrate. While he was posted as Munsif Magistrate, Kollapur, the members of the Bar made complaint casting aspersion on his integrity and conduct. On receipt of the complaint, the High Court got a discreet enquiry made through District Judge, Mahabubnagar, who submitted report dated 10-2-1994 with the finding that allegations enumerated in the complaint were prima facie correct. After considering the preliminary enquiry report, the High Court vide its order dated 15-3-1994 placed the petitioner under suspension. Simultaneously, a regular departmental enquiry was initiated against him under Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 (for short 'the Rules') and Additional District Judge, Kurnool was appointed as enquiry officer. The following

charges were framed against the petitioner:

"CHARGE NO.1:

That Sri Syed Anwar Saleem, while working as Munsif Magistrate, Kollapur, during a period of nine months, indulged in corruption by collecting minimum amount of Rs.200/- by way of illegal gratification for granting bails and collecting money for release of the case property in criminal cases and openly demanding huge amounts as bribe for disposal of civil suits and criminal cases and contacting private parties in his chambers and collecting amounts from them by way of illegal gratification and thereby rendering his integrity doubtful and such a conduct of the above Magistrate is unbecoming of a judicial officer and are thereby guilty of grave misconduct in contravention of R.3 of Andhra Pradesh Civil Services Conduct Rules, 1964.

CHARGE NO.2:

That Sri Syed Anwar Saleem, while working as Munsif Magistrate, Kollapur in the course of his corrupt practices intentionally withheld confiscation of 13 cycles, which were the unclaimed case property produced by the Kollapur Police in S.T.C.30/93 on 24-12-1993 though he ordered confiscation of the cash of Rs.170/- and 7 cocks, which were later auctioned and that on 27-12-1993, he ordered return of the 13 cycles to the petitioners, who filed petitions through Sri V. Upender, Advocate without any proof of ownership of the cycles by them and he ordered the return of the said cycles in spite of caution given to the contra by Sri C.H. Suryanarayana Murthy, Deputy Nazir of the Court and that he released the said cycles by taking bribes from the concerned petitioners and the said action besides amounting to grave misconduct is also a serious material irregularity committed by him in violation of the procedure sanctioned by law and thus the officer is guilty of grave misconduct and material irregularity in discharge of his official duty which is unbecoming of a judicial officer in contravention of R.3 of A.P. Civil Services Conduct Rules, 1964.

CHARGE NO.3:

That Sri Syed Anwar Saleem, while working as Munsif Magistrate, Kollapur performed the marriage of his daughter at Hyderabad and for the said marriage, he took the clothes from the shop of Sri V. Upender, Advocate and other padmasali persons of Pentlavalli village, Kollapur Mandal, by way of illegal gratification and is thus guilty of grave misconduct unbecoming of a judicial officer in contravention of Rule-3 of Andhra Pradesh Civil Services Conduct Rules, 1964.

CHARGE NO.4:

That Sri Syed Anwar Saleem, while working as Munsif Magistrate, Kollapur, sought to justify his corrupt practices by openly telling in a brazen manner that High Court Judges themselves were taking bribes and there was no wrong if

he took bribes and further boasting that the Hon'ble Sri Justice Syed Shah Mohammed Quadri, Judge of the High Court of A.P. is closely related to him and is his god-father and so, nobody can do any harm to him and indulging in such a talk amounts to misconduct on his part, unbecoming of a judicial officer in contravention of Rule-3 of Andhra Pradesh Civil Services Conduct Rules, 1964.

CHARGE NO.5:

That Sri Syed Anwar Saleem, while working as Munsif Magistrate, Kollapur, used to close the prosecution evidence without examining the material witnesses whenever approached by the concerned parties, resulting in their acquittal and such a premature closure of the prosecution leading to miscarriage of justice for extraneous considerations amounts to misconduct on his part unbecoming of a judicial officer in contravention of Rule-3 of Andhra Pradesh Civil Services Conduct Rules, 1964.

CHARGE NO.6:

That Sri Syed Anwar Saleem, while working as Munsif Magistrate, Kollapur, was staying in the Court Chambers during the entire tenure, but claimed house rent allowance without actually taking any house on rent and such illegal drawal of house rent allowance contrary to the rules amounts to misconduct on his part unbecoming of a judicial officer in contravention of Rule-3 of Andhra Pradesh Civil Services Conduct Rules, 1964.

CHARGE NO.7:

That Sri Syed Anwar Saleem, while working as Munsif Magistrate, Kollapur, used to go to Hyderabad on every Saturday by 1 p.m. and return to headquarters on Monday at 12 Noon without permission from the superiors, which amounts to misconduct, unbecoming of a judicial officer in contravention of Rule-3 of Andhra Pradesh Civil Services Conduct Rules, 1964."

The department examined 17 witnesses and produced 51 documents to prove the charges. The petitioner appeared as a witness in support of his defence and produced 18 documents. The enquiry officer submitted report dated 30-10-1995 with the conclusion that the charges No.4, 6 and 7 have been proved against the petitioner and the remaining charges have not been proved. A copy of the enquiry report was furnished to the petitioner so as to enable him to make representation against the findings and conclusions recorded by the enquiry officer. The petitioner submitted representation dated 21-12-1995, wherein he controverted the findings recorded by the enquiry officer in respect of charges No.4, 6 and 7. The

High Court did not accept the representation of the petitioner and recommended to the government that he be dismissed from service. Accordingly, proposal was forwarded to the State Government, which passed order dated 27-4-1996 dismissing the petitioner from service. Revision filed by the petitioner under Rule 21 (1) and (2) of the Rules, which was erroneously described as appeal and was dealt with as such, was dismissed by the Governor. This was conveyed to him vide letter dated 21-1-1998.

The petitioner has challenged the order of dismissal as also rejection of his revision on the following grounds:

a. The findings recorded by the enquiry officer in respect of charges No.4, 6 and 7 which were accepted by the High Court on administrative side are based on no evidence and, therefore, the order of punishment is liable to be declared as vitiated by an error of law.

b. The allegations levelled in the complaint made by the advocates were motivated and the same should not have been acted upon by the High Court for initiation of departmental inquiry.

c. Charge No.7 was vague to the core and, in any case, he could not have been punished for leaving the headquarter because he used to obtain permission for doing so from District Judge, Mahabubnagar.

In the counter filed on behalf of respondent No.1 it has been averred that the petitioner was dismissed from service because he was found guilty of grave misconduct. It has been further averred that the departmental inquiry was held against the petitioner strictly in accordance with the rules and the principles of natural justice and the findings recorded by the enquiry officer in respect of charges No.4, 6 and 7 are based on cogent evidence produced during the enquiry.

Sri V. Venkata Ramana argued that the findings recorded by the enquiry officer on Charges No.4, 6 and 7 are not based on correct appreciation of evidence and the High Court committed a grave illegality by accepting the same and making recommendation to the State Government for the petitioner's dismissal from service. Learned counsel emphasized that the bald statements made by some advocates that the petitioner had openly claimed his association with a Judge of the High Court and that there was nothing wrong in accepting bribe by the members of the subordinate judiciary because Judges of the High Court were also accepting bribe

could not be made basis for recording a finding against him more so when no corroborative evidence was produced by the department to substantiate the charge. He then argued that the finding recorded on the charge of the petitioner taking rent while living in the Chamber is based on a misreading of evidence and should have been ignored by the High Court. In regard to Charge No.7, learned counsel argued that the finding of the enquiry officer is based on surmises and conjectures and, in any case, the petitioner could not be held guilty because he used to leave the headquarters after obtaining permission from District Judge, Mahaboobnagar. In the end, Sri Venkata Ramana argued that even if the Court is not inclined to interfere with the findings recorded by the enquiry officer in respect of three charges, the punishment of dismissal should be substituted with a lesser penalty by invoking the doctrine of proportionality. Learned counsel submitted that the extreme penalty of dismissal from service was not at all warranted because the petitioner had not been found guilty of financial misdemeanor. He further submitted that the High Court and the State Government should have taken into consideration the fact that as on the date of punishment, the petitioner had completed 30 years service without any blemish and a less severe penalty like compulsory retirement would have met the ends of justice.

Sri C.V. Nagarjuna Reddy, counsel for the High Court and the learned Government Pleader defended the decision of the respondents to dismiss the petitioner from service and argued that in exercise of power vested in it under Article 226 of the Constitution of India, the Court cannot interfere with the findings recorded by the enquiry officer and the discretion exercised by the employer in the matter of imposition of penalty. Sri Reddy took us through the findings recorded by the enquiry officer to show that all the three charges were found proved on the basis of evidence produced by the department. He submitted that the petitioner has not been able to substantiate the suggestive allegations of ulterior motive on the part of the advocates and, therefore, this Court should not upset the well reasoned findings recorded by the enquiry officer. Sri Reddy emphasized that the High Court does not exercise appellate jurisdiction in such matters, and, therefore, there is no warrant for interference with the punishment imposed on the petitioner who has been found guilty of grave misconduct.

We have given serious thought to the respective arguments. Before adverting

to the questions whether the findings recorded by the enquiry officer in respect of Charges No.4, 6 and 7 are based on no evidence and the order of punishment is liable to be declared as vitiated as an error of law and, whether the punishment of dismissal imposed on the petitioner is wholly disproportionate to the misconduct found proved or is totally arbitrary, unreasonable and unconscionable, we deem it proper to remind ourselves of the limited scope of the High Court's power of judicial review in such matters. The prayer made by the petitioner in the writ petition is essentially for issuance of a writ of certiorari. The parameters for exercise of the High Court's power to issue a writ of certiorari are well defined. Such writ, order or direction can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal, etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of

certiorari.

In **Syed Yakoob v. K.S. Radhakrishnan and others** the Constitution Bench of the Supreme Court considered the scope of the High Court's power to issue the writ of certiorari and laid down the following propositions:

> "A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
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> The jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.
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> A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court."

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others** their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

> "Where the evidence adduced before the trial Judge was not so immaculate

that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **R.S. Saini v. State of Punjab and others** the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

"The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

The proposition laid down in **Sayed Yakoob**[1] (supra) has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**

We may now notice some decisions which have bearing on the High Court's power to interfere with the disciplinary proceedings and the order of punishment. In **State of Orissa v. Bidyabhushan Mohapatra**, the Supreme Court considered whether the High Court can interfere with the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, their Lordships of the Supreme Court observed:

"But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were

'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao** the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan Mohapatra**[5] (supra) and held:

"The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding ... under Article 226 of the Constitution."

In **Rly. Board v. Niranjan Singh** the principle laid down in **Bidyabhushan Mohapatra**[5] (supra) was reiterated. In **State of Madras v. G. Sundaram** the Constitution Bench of the Supreme Court laid down the following proposition:

> "High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao** a three Judges Bench of the Supreme Court referred to the judgments of **Syed Yakoob**[1] (supra), **Bidyabhushan Mohapatra**[5] (supra), **Niranjan Singh**[7] (supra) and observed:

> "In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."

In **B.C. Chaturvedi v. Union of India** the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial

review by making the following observations:

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case.

In **Apparel Export Promotion Council v. A.K. Chopra** the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:

> "It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on *no evidence* or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted

to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is *not* concerned with the *correctness* of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.

In the above backdrop, we shall now consider whether the findings recorded by the enquiry officer in respect of Charges No.4, 6 and 7 levelled against the petitioner are based on correct appreciation of evidence or the same are vitiated by an error of law apparent on the face of the record.

Charge No.4:

This charge consists of two parts. It is alleged that the petitioner tried to justify his alleged corrupt practices by openly telling in a brazen manner that the High Court Judges themselves would be taking bribes. He also claimed that he was closely related to one of the Judges of the High Court of Andhra Pradesh and nobody can do any harm to him. During the preliminary enquiry, P.Ws.1 to 5, all of

whom are advocates practicing in Kollapur, testified that the petitioner used to justify his corrupt practices by saying that the High Court Judges were themselves taking bribe and nobody can harm him because Hon'ble Justice Sri Syed Shah Mohammed Quadri was his godfather. In the regular enquiry, P.Ws.1 to 5 reiterated the statements made by them in the preliminary enquiry. P.W.2 happens to be seniormost member of the bar at Kollapur having a standing of over 50 years. The enquiry officer accepted the testimony of the advocates by observing that there was no reason why these persons would depose against the petitioner and concluded that even though the charge of corrupt practices levelled against the petitioner has not been proved, his attempt to justify the corrupt practice of the judicial officers by saying that the High Court Judges were themselves taking bribe and that nobody can touch him because one of the judges of the High Court was his godfather tantamounts to unbecoming of a judicial officer within the contemplation of Rule 3 of A.P. Civil Services Conduct Rules, 1964. Paragraph 44 of the enquiry report which contains detailed analysis of evidence and the conclusion of the enquiry officer read as under:

> "44. In the evidence P.W.1 testified that on one day after the court work is over when himself and several advocates met the officer in the Chambers on his invitation, he told them in the course of conversation that some of the High Court judges are corrupt and at that time the charged officer also told that Hon'ble Justice Sri Syed Shah Mohammed Quadri is his relative and god-father and that nobody can do any harm to him. In the cross-examination P.W.1 asserted that the charged officer commented about the High Court Judges in his presence and in the presence of other advocates. He also asserted that the charged officer adversely commented in a lighter vein about the High Court Judges from the Bench also two or three times in his presence and stated about his relationship to the Hon'ble Justice Sri Syed Shah Mohammed Quadri several times in his presence. P.W.2 the seniormost advocate of Kollapur having over 50 years standing at the Bar also testified that the charged officer has commented in the presence of himself and other advocates that even High Court Judges are taking bribes and there was no wrong if he took the bribe and this comment by him was in the course of casual talk in the court premises. He further deposed that the charged officer stated in his presence that he is related to Hon'ble Justice Sri Syed Shah Mohammed Quadri. P.Ws.3 to 5 have also testified to the same effect that the charged officer in the course of his conversation before the advocates used to comment adversely against the Hon'ble Judges of the High Court and disclose that he was closely related to Hon'ble Justice Sri Syed Shah Mohammed Quadri and so no harm would be done to him. Their evidence on this aspect is not shaken in the cross-examination. They have testified on this aspect from their personal knowledge and perception as they heard it from

the charged officer himself. It is not based on hearsay. The fact that the other advocates have kept silent over this aspect of loose talk on the part of charged officer is no solace to him because the conduct of indulging in any such loose and irresponsible talk even to the hearing of one person is reprehensible. There is absolutely no reason as to why the senior advocates P.Ws.1 to 5 should make a false accusation of this sort against the charged officer. It is to be noted that even in respect of grave charges pertaining to the alleged corrupt practices, the above witnesses did not claim any personal knowledge, but they assert that the charged officer indulged in such loose and reckless talk in their presence and to their hearing in the course of conversation with them. The fact that the date or time as to when the said conversation took place is not disclosed in Exs.P.1 and P.2 or in their evidence is not of much consequence because they cannot be expected to maintain a record of timings of casual or informal conversations. The fact that the charges pertaining to the alleged corrupt practices on the part of the charged officer could not be established does not also make any difference and it cannot be contended that because those charges were not proved there was no need or occasion for the charged officer to attempt to justify his conduct by trying to project the Hon'ble Judges of the High Court in bad light with adverse comments. The thrust of the charges is whether or not the charged officer indulged in any such loose talk. The evidence on record sufficiently establishes that the charged officer has more than once indulged in such reckless and irresponsible talk in the course of his conversation with the members of the Bar and it certainly amounts to misconduct on his part unbecoming of a judicial officer and in contravention of Rule 3 of Civil Services Conduct Rules, 1964. In these circumstances it is held that the charge No.4 is proved against the charged officer.

Charge No.6:

The allegation against the petitioner was that while he used to stay in the chamber of the Court during his tenure as Munsif Magistrate, Kollapur, the petitioner drew house rent allowance. In the preliminary enquiry, 8 advocates of Kollapur testified that the petitioner used to live in the chamber. P.W.13, who is Head Clerk of the Court proved that the petitioner had claimed house rent allowance for 9 months. In the regular enquiry, 6 advocates who appeared as P.Ws.1, 3, 5, 6, 8 and 11 deposed in one voice that the charged officer used to reside in the court chamber, but P.Ws.9 and 10 resiled from their earlier statements. P.W.15 who was working as Deputy Nazir and P.W.16 who was working as Attender also testified that the petitioner used to reside in the chamber. P.W.16 gave detailed version of the activities of the petitioner while he was residing in the chamber. The petitioner tried to rebut the charge by stating that he had taken house on rent from Sri D. Srinivasa

Rao, but could not prove the same and evidence of D.W.1

Sri D. Krishnadeva Rao who deposed that the petitioner was residing in his house as a tenant was not accepted by the enquiry officer. The discussion made by the enquiry officer on this charge is found in para 32 to para 36 of the report. The same are extracted below:

> "32. In the evidence during this enquiry P.W.1 reiterated that the charged officer was staying in the Chambers and he has not taken any house on rent for his residence during the entire period he worked. In the cross-examination it was suggested to P.W.1 that the charged officer was residing in a rented house belonging to Sri D. Srinivas Rao and he never resided in the Chambers. P.W.1 denied the suggestion and stated that he knows the house of Srinivas Rao
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> which is 400 or 500 yards from the court building and that the charged officer was getting food from outside to the chambers and was sleeping on the big office table in the Chambers. P.W.2 senior advocate having over 50 years of standing at Kollapur bar deposed that the charged officer was residing in the Chambers itself without taking any house on rent in the town during his entire tenure. The other advocate witnesses P.W.3, P.W.5, P.W.6, P.W.8, P.W.11 have all testified in one voice that the charged officer was residing in the court chambers only and he has not taken any house on rent at Kollapur during his entire tenure. P.W.9 and P.W.10 tried to resile away from their earlier statements Exs.P.13 and P.14 given before P.W.17 by deposing that the contents of the said statements are true and correct except that the Magistrate was living in the Chambers and he has not taken any house on rent. P.W.17 stated that P.W.9 and P.W.10 have stated as contained in Exs.P.13 and P.14. Even according to P.W.9 and P.W.10 the other contents of their previous statements Exs.P.13 and P.14 are true and correct. It is highly improbable and hard to believe that P.W.17 the District Judge and a responsible officer would have recorded the said averments in Exs.P.13 and P.14 without P.W.9 and P.W.10 actually stating the same. There is absolutely no reason as to why P.W.17 should record something which was not stated by the witnesses. P.W.9 and P.W.10 being advocates are literate persons and they cannot be expected to have signed Exs.P.13 and P.14 sworn statements without reading their contents. It is obvious that having stated before P.W.17 that the charged officer was staying in the Chambers only without taking any house on rent, the two witnesses are now trying to resile away from their earlier statements Exs.P.13 and P.14 probably to accommodate the charged officer. Thus, all the advocate witnesses have stated both during the preliminary enquiry and also regular enquiry that the charged officer was residing in the court Chambers and he has not taken any house on rent, but still he was claiming H.R.A. Kollapur being a small town and the advocates being the residents of the place, can be expected to know as to where the charged officer was residing. Their evidence that the charged officer was residing in

the court Chambers and he has not taken any house on rent cannot therefore be brushed aside.

33. P.W.13 the Head Clerk of the court has curiously testified that he does not know where the charged officer was residing. It is hard to believe that the Head Clerk would not be knowing as to where his officer was residing especially at a small place like Kollapur. He vaguely says that he heard through the Attenders that the charged officer was residing in the house of Sri D. Srinivas Rao. He however admitted that he has not seen the charged officer at any time in the house of Sri D. Srinivas Rao and he does not know how much rent the charged officer was paying and the charged officer has not furnished any rent receipts to the office for the purpose of record. According to him, the charged officer was taking lunch in the Chambers, but he curiously says that he does not know where he was sleeping during night time. If really the charged officer has taken the house of Sri D. Srinivas Rao on rent, there is no need for P.W.13 to disclaim the knowledge as to where the charged officer was sleeping during night time. A vain attempt to accommodate the charged officer to the extent possible is clearly discernible from the evidence of P.W.13. P.W.13 admitted that the residence of the officer was not notified to the District Court.

34. P.W.15 the Deputy Nazar also deposed that the charged officer was residing in the Chambers of the court and he has not taken any house on rent. It is also in his evidence that he was allotting duties to the Attenders and out of 5 Attenders, two were on guard duty and three were allotted to the officer for working in the court and at the place of his residence. He further testified that as the officer was residing in the Chambers no Attender was bringing the office box from any rented premises to the court and back and all the Attenders were doing the duty in the court compound only. P.W.15 being the Deputy Nazar incharge of allotment of work to the Attenders is thus a competent witness to testify as to the nature and place of the work of the Attenders and his evidence goes to show that the charged officer was residing only in the Chambers and so there was no occasion for any Attender to carry the office box from the court to any rented premises and back and all the Attenders were doing duty in the court compound only.

35. P.W.16 one of the Attenders who worked under the charged officer also testified that the charged officer was residing in the Chambers during his entire tenure as he could not secure a house and among the three Attenders one was attending to the court hall duty and the other two were attending on the officer by turns. It is also in his evidence that they were getting meals carriers from the hotel to the Chambers for lunch and dinner and the charged officer was sleeping inside the Chambers. He further deposed that as the charged officer did not take up any house for his residence the office box remained in the Chambers and the charged officer used to give dictation to the Steno in the Chambers. In the cross-examination P.W.16 denied the

suggestion that the charged officer was residing in the house of D. Srinivas Rao. He further denied the suggestion that he was deposing falsely because the charged officer called for the explanation by giving a memo. There is nothing to show that any such memo was given by the charged officer to P.W.16 calling for his explanation for any dereliction of duty. The said aspect is not suggested to P.W.13 and P.W.15. In the cross-examination P.W.16 asserted that the charged officer was taking bath in the bathroom attached to the Chambers and was residing in the Chambers and sleeping on the office table. In the re-examination he stated that the office table in the Chambers measures 4 mooras x 3 mooras (i.e., 6' x 3½'). P.W.16 one of the Attenders who actually attended on the charged officer is a competent witness to testify as to where the charged officer was residing and his evidence clearly shows that the charged officer has not taken any house on rent and he was residing in the court chambers only through out his tenure. P.W.17 deposed that the charged officer has not obtained any permission from him to stay in the Chambers and his enquiry revealed that the charged officer was residing in the Chambers itself during his entire tenure and claimed full H.R.A. as revealed from the pay bill register and acquittance register and he never informed the District Court that he has taken a private residence in the house of one D. Srinivas Rao of Kollapur.

36. In support of his plea that he has taken a private house on rent the charged officer examined D.W.1 Sri D. Krishnadeva Rao who deposed that the charged officer was residing in his house as a tenant. It is not the plea of the charged officer at any time that he was tenant in the house of D.W.1. In the cross-examination of P.W.1 and other witnesses it was suggested that the charged officer has been residing in the house of one D. Srinivas Rao. Of course D.W.1 stated that Sri D. Srinivas Rao is his senior paternal uncle, but the plea of the charged officer that he has been tenant in the house of Sri D. Srinivas Rao is inconsistent with the evidence of D.W.1 that the charged officer was his tenant. According to D.W.1 the charged officer was paying rent of Rs.200/- p.m. and D.W.1 passed the receipts Exs.D.1 to D.9. It was nowhere pleaded by the charged officer either in his written statement or by way of suggestions to the witnesses that he was paying rent of Rs.200/- p.m. and obtaining receipts. If the receipts Exs.D.1 to D.9 which were filed by the charged officer on 17-6-1995 were genuine he could have referred to their existence in his written statement filed on 12-10-1994 and he could have filed the receipts along with the original written statement. In the cross-examination D.W.1 stated that except Exs.D.1 to D.9 there is no other record to show that charged officer paid him rent of Rs.200/- p.m. and there is no rental agreement or any other document of tenancy between him and the charged officer. D.W.1 is admittedly a resident of Hyderabad and he admitted that he was not residing at Kollapur during the period from May, 1993 to January 1994. He claims that he used to collect the rents personally during his trips to Kollapur. He is an employee in the Allwyns at Hyderabad. He admits that there will not be any record in his company to show that he was at Kollapur on the respective dates of Exs.D.1 to D.9. The evidence of D.W.1 that the

charged officer was his tenant on a rent of Rs.200/- p.m. and he was collecting rents personally and passing the receipts Exs.D.1 to D.9 is inconsistent with the plea of the charged officer that he has been tenant in the house of Sri D. Srinivas Rao. No weight or credence can be given to the testimony of D.W.1 or the receipts of Exs.D.1 to D.9 said to have been passed by him. There is no reference to D.W.1 or to Exs.D.1 to D.9 either in the original written statement or in the additional written statement. The additional written statement was filed on 17-6-1995 on which date Exs.D.1 to D.9 receipts were filed along with a memo, but still there is no reference to D.W.1 or the receipts Exs.D.1 to D.9 in the additional written statement. D.W.1 has not produced any document to show that he owns the house D.No.3-22-81 or any portion thereof. In the cross-examination he admitted that the said house stands in the name of his senior paternal uncle Sri D. Srinivas Rao and there is no document to show that the house fell to his share, and there has been no partition. When that is so, it cannot be said that the portion in the alleged occupation of the charged officer fell to the share of D.W.1 or that it was let out by him and … the rents for the said portion is … is not examined. The evidence of D.W.1 is not convincing. It is obvious that he has been pressed into service along with Exs.D.1 to D.9 in a vain attempt to somehow get over the adverse situation the charged officer found himself in on account of almost unanimous evidence from the advocate witnesses and staff members that the charged officer was residing in the Chambers of the court only and has not taken any house on rent during his entire tenure. It is therefore clear from the evidence on record that the charged officer did not take the house of Sri D. Srinivas Rao or D.W.1 ion rent but he was residing only in the court Chambers during his entire tenure of about 9 months from May 1993 to January 1994."

The enquiry officer then referred to Circular RoC No.2568/95 C-Spl. (Con.) dated 11-7-1995 and held that unauthorized drawal of house rent allowance amounted to misconduct.

Charge No.7 levelled against the petitioner was that he used to leave headquarter and visit Hyderabad on every Saturday afternoon and would come back on Monday in the afternoon. The enquiry officer took cognizance of the fact that the petitioner used to take permission from District Judge, Mahabubnagar for leaving headquarters on every Saturday and held that this did not entitle him to leave the Court before working hours and return after commencement of the working hours on Monday and concluded that the charge is proved. Paragraphs 40, 41 and 42 of the enquiry report give an idea of the reasoning adopted by the enquiry officer for holding the petitioner guilty of this charge. Therefore, the same are reproduced below:

“40. In the evidence during the regular enquiry, P.W.1 reiterated that the charged officer was leaving for Hyderabad on every Saturday by bus at 1 p.m. and was returning on the next working day at about 12 .00 noon and as such the work of Saturdays and Mondays used to suffer. P.W.2 a senior advocate having over 50 years standing at Kollapur also deposed that the charged officer used to leave for Hyderabad once in two weeks or so by about 12.00 noon or 1.00 p.m. and return to headquarters on the next Monday by 11 a.m. or 12.00 noon. P.W.3 testified that the charged officer used to leave for Hyderabad almost every Saturday by 1.00 or 2.00 p.m. and return to Kollapur on next Monday by about 12.00 noon. P.W.4 has no personal knowledge about it and he only heard it from others. P.W.5, P.W.6 and P.W.11 also deposed to the effect that the charged officer used to leave the head quarters in the afternoon on Saturdays and return to the headquarters in the afternoon of the next Monday. The above witnesses being the advocates practicing at Kollapur can be expected to know as to when the charged officer was leaving the headquarters and returning because they regularly attend the court. The evidence of the advocate witnesses on this aspect is therefore based on their personal knowledge and experience and not on any hearsay. The advocates attending the court on Monday morning will be knowing as to when the officer returned to the headquarters and resumed the work especially because the charged officer has been residing in the Chambers itself.

41. In the cross-examination of P.W.13 the Head Clerk it was elicited that the charged officer was leaving the headquarters after applying for the permission from the District Court and on Saturdays there will not be any bench work and the officer used to return to the headquarters on Monday before the court commenced, but sometimes he used to come late by 15 minutes or half an hour when the bus came late. From this evidence of P.W.13 also it can be seen that the charged officer was leaving the headquarters on Saturdays and returning on Mondays. The plea of the charged officer in his written statement and additional written statement is that he was leaving the headquarters with the permission of the District Court. He did not however deny the fact of going to Hyderabad on Saturdays and returning to Kollapur on Mondays. Admittedly his family was staying at Hyderabad. It is not his plea that he shifted his family to Kollapur. His plea is only to the effect that whenever he left headquarters it was with the permission of the District Court. The file pertaining to the grant of permissions and casual leaves is sent for at the instance of the charged officer from the Additional District Judge, Mahabubnagar and it is marked as Ex.C.1. A perusal of Ex.C.1 shows that the charged officer has been frequenting Hyderabad, of course after applying for sanction of the casual leave or permission to avail the public holidays as the case may be. Even if the charged officer availed the casual leave or public holidays seeking the necessary sanction or permission from the District Court, still he cannot leave the headquarters during office hours of Saturdays and he has to return to the headquarters before the working hours on Mondays. There is absolutely no

reason as to why P.W.1, P.W.2, P.W.3, P.W.5 and P.W.6 should depose falsely that the charged officer was leaving headquarters in the afternoon on Saturdays and returning in the afternoon on Mondays. It has to be noted that even regarding the more serious charges pertaining to the alleged corrupt practices the above witnesses conceded that their knowledge is based on hearsay. So far as this charge is concerned they deposed from their personal knowledge and their competence to so depose cannot also be doubted because they are practicing advocates at Kollapur regularly attending the court there and the charged officer is also residing in the court Chambers itself.

42. Thus, the evidence on record shows that the charged officer was leaving the headquarters after applying for necessary permission from the District Court but he was however leaving the headquarters in the afternoon on Saturdays i.e., before the closure of the working hours and returning to the headquarters on Mondays at about noon time i.e., after commencement of the working hours and it was resorted to very frequently. When the officer himself indulged in such permissiveness it breeds indiscipline among the staff members as well apart from the fact that office work on Saturdays and the bench work on Mondays also suffers. Such conduct on the part of the charged officer to leave the headquarters on the afternoon of Saturdays and return to the headquarters on the afternoon of Mondays almost week after week certainly amounts to misconduct which is unbecoming of a judicial officer and in contravention of Rule-3 of Civil Services Conduct Rules, 1964. In these circumstances the charge No.7 is held proved against the charged officer to the extent indicated above."

Sri V. Venkata Ramana made efforts to persuade us to re-appreciate the evidence and over turn the findings recorded by the enquiry officer, which, as mentioned above, were accepted by the High Court. He emphasized that the advocates who deposed against the petitioner were hostile to him because of his strict and uncompromising attitude and, therefore, their evidence could not be made basis for holding him guilty. Learned counsel then took us through representation dated 21-12-1995 made by the petitioner and argued that abject failure on the High Court to consider the points raised in the representation should be treated as sufficient to nullify the order of punishment. He further argued that in view of the findings recorded by the enquiry officer in relation to charges No.1 and 2, charge No.4 could not have been treated as proved. Learned counsel submitted that once the petitioner was exonerated of the charge of corruption, he could not have been held guilty of openly trying to justify the taking of bribe.

Sri C.V.Nagarjuna Reddy argued that even though charges No.1 and 2 may not have been found proved against the petitioner, the enquiry officer did not commit any error by holding him guilty of charge No.4. Sri Reddy submitted that the conduct of the petitioner in trying to justify the taking of bribe by saying that High Court Judges also used to take bribe and that nobody can touch him because one of the Judges was his godfather was wholly unbecoming of a judicial officer. Learned counsel then argued that even if the finding recorded by the enquiry officer in respect of charge No.4 is held to be legally untenable, the order of punishment should not be annulled because the remaining two charges found proved against him are extremely serious. Sri Reddy laid considerable emphasis on the fact that charges of grave financial irregularity of drawing house rent allowance for a period of 9 months while staying in the chamber attached to the Court has been found proved against the petitioner beyond any manner of doubt. He then submitted that charge of leaving the headquarter during working hours of Saturday and coming back on Monday after commencement of the working hours has been proved against the petitioner and, therefore, there is no warrant for court's interdiction in the matter of punishment imposed on the petitioner. According to the learned counsel, charge No.6, by itself, is sufficient for imposing the penalty of dismissal from service. Sri Reddy controverted the argument of Sri Venkata Ramana that the High Court did not apply mind to the representation made by the petitioner and argued that the High Court was not required to independently analyse the evidence and record findings on the charges found proved against the petitioner because it had accepted the report of the enquiry officer. He also emphasized that the so-called failure of the High Court to independently record reasons for holding the petitioner guilty of three charges cannot be made a ground for nullifying the order of punishment because no prejudice is shown to have been caused to him.

In our opinion, the enquiry officer did not commit any error in appreciating the evidence produced during the enquiry and the conclusions recorded by him are supported by cogent evidence. A large number of advocates practicing at Kollapur had not only complained against the deviant conduct of the petitioner, but twice appeared before the enquiry officer to substantiate the allegations levelled by them. The employees of the Court also supported the allegations levelled by the advocates. In the course of enquiry, the petitioner did not adduce any evidence to discredit the testimony of the advocates and members of the staff. Therefore, the

findings recorded by the enquiry officer in respect of charges No.4, 6 and 7, which have been extracted above cannot be declared as vitiated by error of law warranting interference by this Court under Article 226 of the Constitution of India. At the cost of repetition we consider it necessary to emphasize that the scope of judicial review of disciplinary action taken against a delinquent employee is very limited. In exercise of power under Article 226 of the Constitution of India, the High Court cannot sit in appeal over the findings recorded by the enquiry officer and / or the disciplinary authority. The High Court cannot re-appreciate or re-value the evidence or go into the sufficiency and / or adequacy of the evidence. The mere possibility that the High Court may, on re-appreciation of evidence come to a different conclusion is not a ground for interfering with the findings and conclusions reached by the enquiry officer and / or the disciplinary authority. The High Court can interfere with the findings and conclusion reached by the competent authority only if the same are based on no evidence or are based on legally inadmissible evidence or if it is found that while recording adverse findings, the competent authority overlooked material and relevant evidence and such omission has affected the merits of the finding. Even in the cases of last mentioned category, the Court may refuse to interfere if it is found that the action or omission of the competent authority has not caused prejudice to the delinquent.

In the present case, the findings recorded by the enquiry officer on charges No.4, 6 and 7 are based on a comprehensive evaluation of the evidence produced during the enquiry. He referred to the testimony of each witness as also the documents and accepted the evidence produced by the department and discarded the defence of the petitioner. It is neither the pleaded case of the petitioner nor his counsel has been able to show that the findings recorded by the enquiry officer are based on no evidence or that no reasonable person could have reached those findings and conclusions on a proper appreciation of evidence. Therefore, we do not find any merit in the petitioner's plea that the order of punishment is vitiated by an error of law apparent on the face of the record.

The argument of Sri V. Venkata Ramana that charge No.4 cannot be treated as proved because the charges of corruption have not been proved against petitioner sounds attractive but on a closer scrutiny we are unable to agree with him. The substratum of charge No.4 is that the petitioner had openly declared that there was nothing wrong for him to accept bribe because the High Court Judges also used

to accept bribe and that nobody can touch him because one of the Judges of the High Court was his godfather. Both the facets of this charge have been found proved on the basis of the statements made by the advocates, one of whom had a standing of more than 50 years on the date of making statement. The petitioner did try to discredit the statements of the advocates by suggesting that they were ill-disposed against him, but he did not produce any evidence to substantiate this accusation. Therefore, the mere fact that the charge of acceptance of bribe has not been proved against the petitioner cannot be made a ground for rejecting the finding recorded by the enquiry officer in relation to charge No.4.

We are further of the view that even if charge No.4 is held as not proved, the order of punishment cannot be quashed because the remaining two charges i.e., charges No.6 and 7 which have been found proved against the petitioner are extremely serious and charge No.6 i.e., drawing house rent allowance without living in a rented accommodation alone would have been sufficient to dismiss him from service. Therefore, by applying the ratio of the Supreme Court's decision in **Bidyabhushan Mohapatra**[5] (supra) we have no hesitation to reject the petitioner's challenge to the order of punishment only on the ground that one of the charge i.e., charge No.4 can be treated as not proved against him.

The question which remains to be considered is whether the punishment imposed on the petitioner is shockingly disproportionate to the misconduct found proved against him or the same is totally arbitrary, unreasonable and unconscionable and warrants interference by the Court. The doctrine of proportionality was invoked by the Supreme Court in **Ranjit Thakur v. Union of India** for quashing the order of punishment. The proposition laid down in that case reads as under:

> "Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are

recognized grounds of judicial review."

In **Union of India v. G.Ganayutham** the doctrine of proportionality was considered along with Wednesbury Rule and the following propositions were laid down:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to

reasonableness will remain with the executive or administrative authority. The secondary judgent of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

In Om Kumar v. Union of India the Supreme Court considered the applicability of the doctrine of 'Proportionality' in the context of Article 14 of the Constitution, referred to the judgments in **Ranjit Thakur Vs. Union of India**[13] (supra), **B.C. Chaturvedi Vs. Union of India** and held:

"1) In this context, we shall only refer to these cases. In **Ranjit Thakur V. Union of India** this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In **B.C. Chaturvedi Vs. Union of India** this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would nor normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in **Ganayutham**."

2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In **Regional Manager, U.P. SRTC v. Hoti Lal** the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

> "The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved by the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional." (underlining is ours)

Reference also deserves to be made to the decisions of the Supreme Court in **State Bank of India v. Samrendra Kishore Endow**; **State of Uttar Pradesh v. Ashok Kumar Singh**; **State of Uttar Pradesh v. Nandkishore Shukla**; **State of Punjab Vs. Baxi Singh**; **Uttar Pradesh State Road Transport Corporation v. A.K. Parul**; **Union of India Vs. J.R. Gheman**; **Secretary A.P. SWRE I Society Vs. J. Prathap** wherein the Supreme Court disapproved the invoking of the doctrine of proportionality by the High Courts.

In **Director General, RPF v. Ch. Sai Babu** the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

> "Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

Following the ratio of the above noted decisions of the Supreme Court, we hold that the High Court will be loath to interfere with the discretion exercised by the employer in the matter of imposition of punishment. Only in exceptional cases the Court may interfere with the punishment if it is convinced that the same is wholly arbitrary or shockingly disproportionate to the misconduct found proved. For determining whether the punishment imposed by the disciplinary authority is grossly or shockingly disproportionate, the Court has to take into consideration all the relevant factors including the nature of charges proved, the past conduct of the employee, the punishment, if any, imposed earlier, the nature of duties assigned to the employee having due regard to their sensitiveness, performance norms, if any, laid down by the employer and above all the paramount requirement of maintaining discipline in the service and larger public interest. If the Court comes to a definite conclusion that the employer has failed to consider relevant factors and on that account the order of punishment is vitiated, the authority concerned can be called upon to re-examine the issue with reference to the relevant factors and then pass appropriate order.

We may add that the position of a judicial officer is not akin to an ordinary civil servant. The judicial service is not a service in the sense of an employment. The judges discharge their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. They must be totally committed to the cause of justice. Their conduct within and outside the Court must be exemplary. They are obliged to discharge their function in a manner which enhances the dignity of the institution of which they are the integral part. Their functioning must be such which instill confidence in the public in general and the litigants in particular. They must not do anything which shakes the peoples' confidence in the system of administration of justice. In **High Court of Judicature, Bombay v. Shirish Kumar Rangarao Patil** the Supreme Court expressed its concern over the erosion of values in the judiciary in the following words:

> "The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124 (6) of the Constitution. It would therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and

self-introspection."

In **The High Court of Judicature at Bombay v. Shashikant S. Patil and another**, the Supreme Court reversed the decision of the Division Bench of the High Court which had nullified the dismissal of the respondent and observed:

> "The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious". Dishonest judicial personage is an oxymoron."

In the context of judicial services it is also important to bear in mind that the unimpeachable integrity and unquestionable conduct of every judicial officer is sine qua non for maintaining the peoples' faith and confidence in the system of administration of justice and if any component of this system is found to have indulged in financial misconduct, the only course open to the authority concerned is to remove that component and replace it by a new one. If strict standards of conduct are not followed by the members of the judicial family, they have to be shown the doors and there is no justification for judicial intervention in such matters.

In the present case, we are convinced that the petitioner has failed to make out a case for interference with the order of punishment. He was found guilty of grave misconduct. One of the charges found proved against him falls in the realm of financial delinquency. The petitioner was holding the post of Munsif and Judicial Magistrate as a trustee of public faith and confidence. By drawing house rent allowance without living in a rented accommodation he will be deemed to have committed breach of trust reposed in him. Therefore, he has lost right to continue in service and the punishment imposed on him cannot, by any stretch of imagination, be treated as shockingly disproportionate to the misconduct found proved or wholly arbitrary, unreasonable or unconscionable.

For the reasons mentioned above, the writ petition is dismissed.

G.S. SINGHVI, CJ

R. SUBHASH REDDY, J

December 30, 2005

svs